

SDMS # 2054404

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Shell Chemical Company  
Acquisition of Los Angeles  
Plant from R.P.F.D.C.

December 9, 1954

Outline of Matters for Consideration  
In Connection With Opinion of Counsel

1. The mortgage is in proper form and legally enforceable in accordance with its terms except as such enforcement may be limited by bankruptcy, insolvency or other laws affecting the enforcements of creditors' rights.

A. Title of Mortgage. In order to comply with the requirements of Sections 2956 and 2957(5) of the California Civil Code, it will be necessary for the document to be titled "Mortgage of Chattels and Purchase Money Mortgage of Real Property" or some similar heading which will plainly indicate at the outset that the mortgage is at least in part a chattel mortgage.

B. Venue. The venue provision in the upper left hand corner at the beginning of the mortgage is not a required provision of any kind in the state of California.

C. Recitals. The recitals do not appear to affect the enforceability of the mortgage.

D. Habendum.

1) The language in this clause is possibly ambiguous in view of later use made of the term "mortgaged property". The possible ambiguity is

a) "Mortgaged property" refers only to the right, title and interest in the described land acquired by the mortgagor from the mortgagee under the deed, or

b) "Mortgaged property" means all right, title and interest in the land subject to the deed. This ambiguity can be easily clarified

and should be in view of the representations which are required of the mortgagor under Sections 2 and 3.

2) Group A. No problem as to enforceability.

We assume that the description used will be furnished by the title company which investigates the title to the property and will have been confirmed by comparison with a survey.

3) Group B. Same comment as for Group A, above.

4) Group C. No problem as to enforceability.

5) Group D. No problem as to enforceability.

6) Group E. Existing ambiguity in this Group may present an enforceability problem and could conceivably lead to serious dispute as to the property subject to the mortgage. The principal problems presented by this clause are:

a) That all chattels located on the premises are not necessarily covered and it is possible that this may lead to attempts by one party or the other to expand or contract the meaning of the terms given.

b) As to future property to be brought onto the premises, only "renewals, replacement or substitution of or appurtenant to" property become subject to the mortgage. The mortgagor is required under the mortgage to replace the property conveyed by the deed.

It is suggested that if it is at all possible a more exact schedule of the personal property subject to the mortgage be prepared. This schedule would be useful not only in determining what property was subject to the mortgage but

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also in determining what property was required to be replaced.

7) Exceptions. The exceptions do not present a problem from the enforceability standpoint. It is to be noted that they may be somewhat redundant if "mortgaged property" means only the property conveyed by the deed. It is desirable to list them specifically, however, for purposes of clarity.

a) Paragraph (4)(a). No problem as to enforceability. If possible, the paragraph should be altered slightly so that it clearly covers judgment liens provided they are discharged prior to foreclosure. Such a provision is possibly not essential, but would seem to be within the understanding of the parties and may avoid a future controversy.

b) Paragraphs (4),(b),(c),(d) and (e) are not objectionable from an enforcement standpoint.

E. Covenants and Agreements.

Section 1. No problem as to enforceability.

Section 2. This section and section 3 are acceptable and present no problem as to enforceability, if the words "mortgaged property" are clearly defined to include only those interests in the subject land which are conveyed to the mortgager by the deed. If "mortgaged property" is construed to mean all interest in the land except for those things which are listed as exceptions in the deed, the enforceability of this provision would still not be affected but a question would arise as to the extent of the lien.

Section 3. Same comment as for Section 2, above.

Section 4. This section presents no problem from

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an enforceability standpoint, but it should be noted that the intent of the section is to be gathered from necessary intendment rather than from the words of the section itself, since the recordation of the mortgage does not effectuate or maintain the lien of the mortgage. It would be desirable to reword the section so as to require the mortgager to do all things which may be necessary in order to give the lien of the mortgage the protection afforded by the recording laws of the state of California.

Section 5. The first portion of this section, commencing with the first word on Page 6 and ending at the second semicolon on Page 7 imposes an impossible burden on the mortgager since the matter of whether or not a lien will be imposed is not necessarily within the control of the mortgager. In this regard section 5 does not appear to be in accord with the "permitted encumbrances" set out on Page 4 of the mortgage. The apparent intent of this section is to allow the liens to accrue, for example tax liens, but to require their prompt discharge. It is suggested that the language of this section be altered in order to make this understanding express.

Section 6. This section presents no problem as to enforceability. It should be noted, however, that except for the matter of waste, the problem of repair and maintenance is covered by section 16. As worded, section 6 is ambiguous and section 16 redundant. The ambiguity in section 6 is that the words "subject to the provisions of section 16" may mean here (i) that the provisions of section 6 must be complied with unless performance is excused by section 16, or (ii) that

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compliance with section 6 is excused if the same subject matter is covered by section 16. Inasmuch as section 16 would permit the mortgagor to maintain the facility in such condition that it could be made to operate within 180 days, the provisions of section 6 may be unnecessarily onerous.

Section 7. There is no objection to this clause from an enforceability standpoint. Again, however, the intent of the section must be implied from the wording. Taxes are due until paid and the obligation of the mortgagor to pay taxes on or before the last date on which the same shall be due and payable is meaningless. The obvious intent of the section is to require payment of the items set out prior to delinquency and it is suggested that the wording of the section be changed to so provide.

Section 8. The intent of this section and the problem which it is intended to cover are not clear. Presumably the section is intended to cover the matter of leases which become subject to the mortgage. The mortgage does not otherwise contain language which would subject leases entered into by the mortgagor, for land other than that conveyed by the deed, to the mortgage. No opinion can be made as to the enforceability of this clause until it is clear under the terms of the mortgage exactly what it is meant to cover. So far as appears on the face of the section, there is nothing in it which would make it unenforceable as to any lease which was subject to the mortgage.

Section 9. No problem as to enforceability. Content appears to be adequately covered by section 5. If section is not dropped, it should be qualified to except rights

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or claims of record or apparent from inspection of the premises.

Section 10. This section presents no problem as to enforceability, although it may be desirable to specify the mechanics of the method whereby the mortgagee will approve the insurance carried by the mortgagor.

Section 11. No problem as to enforceability.

Section 12. No problem as to enforceability.

Section 13. No problem as to enforceability.

Section 14. No problem as to enforceability.

Section 15. No problem as to enforceability, but it should be noted that the section is unnecessary inasmuch as the rights to uranium, thorium and other fissionable materials are reserved to the mortgagee by the deed.

Section 16. No problem as to enforceability from a mortgage law standpoint. See the comment above with regard to section 6.

Section 17. No problem as to enforceability.

Section 18. No problem as to enforceability.

Section 19. The form of this section is not conventional in California. Although assignment of rents is permitted in California, the customary manner of accomplishing the apparent intent of section 19 is for the mortgagor to make an immediate assignment of rents but to retain the right to collect rents until such time as there is a default under the mortgage. There is apparently no California ruling on a clause of the type contained in section 19, but it would be highly desirable to alter this clause so as to follow the form used in California. This would assure its enforceability and local acceptability.

As the clause now stands it would be very difficult to predict the interpretation which a court might put on it. Inasmuch as it does not make a present assignment of rents, issues and profits, it is entirely conceivable that a California court would require a court action to enforce the assignment before it would be effective.

Section 20. The California law contains express provisions with regard to the exercise of a power of sale. See California Civil Code, Section 2924. Section 20 does not meet these requirements. A power of sale is permitted in California mortgages, but section 20 should be rewritten in conventional California form. It has also been noted that in line 15 of the section, the word "mortgages" was used when the word "mortgagor" was intended.

Section 21. This section is not in compliance with Section 564 of the California Code of Civil Procedure as to the appointment of receivers in mortgage foreclosure actions. This section has been held to be a jurisdictional limitation. Although a provision for the appointment of a receiver may be specifically enforced according to the terms of the mortgage when coupled with a right of possession on default, Section 21, as written, would not be enforceable and should be rewritten to conform with California practice.

Sections 22 - 29. The remaining sections 22 through 29 do not present any problems so far as enforceability is concerned.

F. Signature. The signature clause and signatures are adequate under California law. The signature of any authorized officer would be a satisfactory execution of the document. More conventional California practice is to have both the president or



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the vice president and the secretary or assistant secretary execute the document on behalf of the corporation.

C. Acknowledgment. The form of acknowledgment is satisfactory under California law if it is a proper form where taken. It would be preferable, however, to use the California form of corporate acknowledgment.

2. The property descriptions in the mortgage are adequate to constitute the mortgage a lien on the property therein described. No descriptions have been furnished to date. It is assumed that the property descriptions furnished will be

searched by a title company and compared with a survey. An opinion as to this matter may be given without examination of title if, as previously discussed, "mortgaged property" includes only the property conveyed by the deed since the only requisite in that case will be that the property description contained in the mortgage is identical with the property description contained in the deed.

If the intent is to include in the mortgage all interest in the land described in the deed, it will be necessary (a) that the parties agree as to the facts upon which an opinion as to title will be based; (b) that the title and personal property which are mortgaged be examined.

3. The lien, subject only to permitted encumbrances as defined in the mortgage, is a valid and direct first lien on the right, title and interest of the mortgagor in said property conveyed to it by the deed.

It is not anticipated that any difficulty will be encountered in connection with the opinion on this matter assuming the other items mentioned herein have been provided for.

4. The after acquired property provisions of the mortgage are adequate to subject to said lien all property within the contemplation of said provisions subject to permitted encumbrances.

It is not anticipated that this provision will present any difficulties.

5. The note is in proper form secured by the lien of and entitled to the benefits provided by the mortgage.

The form of note submitted appears to be adequate and it is not anticipated that any difficulty will be encountered with this portion of the opinion.

6. The deed and the mortgage have been duly filed and recorded.

In order for this opinion to be given it will be necessary either to supervise directly the recording or for the parties to agree as to the facts upon which reliance can be placed for this opinion. It should be noted, however, that the opinion can only be to the effect that the deed and mortgage have been so recorded as to afford the further protection given by the California recording laws. There is some doubt as to whether or not recording will "establish", or "preserve" the interest of the mortgagee. Undoubtedly a satisfactory opinion can be given on this matter when the recording has been accomplished.

7. Payment of fees and taxes in connection with the issuance of the note and the recording of the mortgage.

If payment of the recording fees is supervised, the problem of giving an opinion as to the recording fee presents no problem. The issuance of the note will probably not be done in California. An opinion as to the fees and taxes payable in that connection would require either an investigation or an agreement as to the facts upon which such opinion is to be based.

It should be noted in connection with the transaction that under California law, a mortgagee is not entitled to a deficiency judgment after a foreclosure or exercise of the power of sale in a purchase money mortgage.

The foregoing outline is the result of a rather brief investigation based on a form of purchase money mortgage and other instruments labeled "draft of 11/18/54" and it should be understood that it is not an opinion as to any of the matters discussed, but has been prepared solely for the purpose of preliminary discussion of the problems which may be encountered.